WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 01−077

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

a. Definitions are useful when a term is used a number of times in a rule. "Actual cost," in s. PSC 130.01 (1), is only used in s. PSC 130.05 (1) (intro.). The rule would be more understandable if the substantive content of the "actual cost" definition appeared in s. PSC 130.05. Furthermore, some thought should be given to the clarity of the definition. What is meant by "surplus income" and "general revenues"?

b. The definition of "municipality" in s. PSC 130.01 (2) differs from the definition in s. 196.01 (4), Stats. Is this difference appropriate? Also, is this definition too narrow? Should ch. PSC 130 also apply to regulations adopted by utility districts, town sanitary districts, metropolitan sewerage districts or other similar special purpose districts?

c. The definition of "ordinance" in s. PSC 130.01 (3) raises several issues. First, it should be considered whether a definition is necessary. The rule is not particularly long, and repeating each of the three words would not add an inappropriate amount of text. Note that the statute [see s. 196.499 (14)] uses the phrase "contract, ordinance or resolution." If the PSC wishes to use a collective noun, it is not appropriate to define "ordinance" to include resolutions and contracts. It would be more appropriate to use another term such as "municipal regulation," and define that term to mean an ordinance, resolution or contract. The definition restricts this term so that it applies only to "municipal rights-of-way." It should be determined, throughout the rule, whether each instance in which "ordinance" is used means only a municipal

right-of-way, or also a utility right-of-way. The phrase "contract entered into" could be clarified. Who might be parties to such a contract?

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The analysis prepared by the Public Service Commission (PSC) and the text of the rule are not clear on the scope of this rule. For example, the first sentence of the analysis states that the rule applies to municipal rights-of-way. The second sentence then refers to a right-of-way, but does not specify that it must be a right-of-way owned by a municipality. The title of the rule refers to utility rights-of-way and a number of provisions in the rule appear to apply to any right-of-way, including those owned by a utility. Does the PSC intend that "municipal right-of-way" means a right-of-way owned by a municipality, or that is merely located within a municipality? This point should be clarified, and each provision of the rule should be reviewed to determine whether references to "right-of-way" should be changed to "municipal right-of-way."

b. "Rights-of-way" is used throughout the rule. For example, see s. PSC 130.02. Is it always clear what is meant by this term, or would some definition be appropriate?

c. "Undergrounding," as used in s. PSC 130.03, appears to be jargon associated with utility regulation. The use of jargon in statutes and rules is almost always inappropriate. The regulatory effect of this provision should be stated clearly.

d. The title of s. PSC 130.03 refers to "special construction conditions." The rule, in s. PSC 130.03 (2) (b) 1., refers to "special design or construction requirements." Can these terms be harmonized?

e. The first sentence of s. PSC 130.03 (2) (a) is not restricted to requirements related to underground installation of transmission and distribution facilities. However, the second sentence, regarding aesthetics, is limited to requirements to install facilities underground. Is this appropriate? In sub. (2) (b) 1., it appears that the word "or" is unnecessary and should be deleted.

f. Section PSC 130.05 refers to "registering" utilities. It is not clear what this means.

g. Section PSC 130.06 does not refer to "ordinances" or to "transmission and distribution facilities." The definitions of these two terms are restricted to municipal rights-of-way. Therefore, it appears that s. PSC 130.06 would also apply to utility-owned rights-of-way. Is this correct? Also, this provision allows a municipal judgment based on the "financial responsibility" or "compliance ability" of a utility. The rule does not indicate what potential action of or requirement imposed on the utility requires financial responsibility or compliance ability.

h. Section PSC 130.07 refers to "pre-excavation condition." It would appear that some uses of a municipal right-of-way would not require excavation, but may nevertheless require

some restoration. Is that the intent of the rule? Also, this provision refers to restoration, but does not indicate what is meant by that.

i. Section PSC 130.08 imposes a requirement for substantial compliance with state statutes. There may be requirements under state statutes, such as procedural requirements for enacting ordinances and publishing them, that have no relationship to utility construction in municipal rights-of-way. Is it the PSC's intent to create in this rule a vehicle for challenging all aspects of municipal compliance with state statutes in the process of enacting ordinances?

j. The term "facilities mapping" is used in s. PSC 130.11, but the rule does not indicate what is meant by that term. Is this an understood term of art?